



**BRIEFING: November 7, 2013 BOARD MEETING AGENDA ITEM #3**

**TO:** Chairman Richard and Board Members

**FROM:** Mark McLoughlin, Director of Environmental Services

**DATE:** November 7, 2013

**RE:** Delegation of Authority to Finalize and Approve the “Lazy K” Mitigation Agreement

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**Introduction**

The California High-Speed Rail Authority (Authority) is proposing to contract for the implementation of off-site mitigation measures related to jurisdictional waters and biological resources for the first construction package (CP 1) of the California High-Speed Rail Project. This would meet a number of biological mitigation obligations contained in the Merced to Fresno Section Environmental Impact Report/Environmental Impact Statement (EIR/EIS), and help fulfill the high-priority preservation of wildlife habitat called for under the California Endangered Species Act, the federal Endangered Species Act, and a number of other state and federal statutes.

**Background**

The Lazy K Mitigation Site is part of the 1,555-acre Lazy K Ranch, and is located at the northwestern edge of Madera County and the southern edge of Merced County, approximately 5 miles east of the City of Chowchilla, 15 miles north of the City of Madera, and 5 miles south of Le Grand in Merced County (Attachment 1). The area on which mitigation related activities will occur consists of a total of 1,005 acres, and is part of a 1,555 acre operating ranch (Attachment 2). The Authority will secure a conservation easement over 530 acres of the property to protect the mitigation area in perpetuity.

The site is primarily undeveloped and consists of open rangeland with upland annual grasslands interlaced by wetland habitats (vernal pool, vernal swale, and seasonal wetland). The Chowchilla River, and its associated floodplain and riparian corridor also run through the area. The Lazy K Mitigation Site is zoned for agricultural uses and has been enrolled since 1970 under the California Land Conservation Act of 1965 (Williamson Act). The Ranch, including much of the Lazy K Mitigation Site, is used for cattle and horse grazing. Grazing typically occurs from November to May. Residences and existing core ranch operations (including ranch headquarters,

corrals, a barn, and an equipment storage yard), which are not part of the Lazy K Mitigation Proposal, are located in the central western portion of the Ranch.

## **Discussion**

### *Mitigation Proposal Description*

The Authority and Federal Railroad Administration (FRA) prepared the *California High-Speed Train (HST) Project, Merced to Fresno Section Final Environmental Impact Report/Environmental Impact Statement* (Final EIR/EIS) (Authority and FRA April 2012). The Authority was the Lead Agency under the California Environmental Quality Act (CEQA), and the FRA was the Lead Agency under the National Environmental Policy Act (NEPA). The Authority Board certified the EIR in May 2012, adopted CEQA Findings of Fact and a Statement of Overriding Considerations, and approved the Merced to Fresno Section. The Authority committed to implementing a Mitigation Monitoring and Reporting Program (MMRP Revision 1, Authority December 2012). The FRA issued a Record of Decision in September 2012, including a Mitigation Monitoring and Enforcement Plan (MMEP).

The Authority and FRA documented development of the mitigation concept for the entire Merced to Fresno Section, including the Lazy K Ranch site, in the *Draft Mitigation Strategy and Implementation Plan* (MSIP) (Authority and FRA 2012). The *Draft Merced to Fresno Section Permitting Phase 1-Specific Permittee-Responsible Mitigation Plan* (Draft PP1-Specific PRMP; Authority and FRA 2013) further focused on implementation of mitigation to satisfy the biological resources-related mitigation requirements for PP1. The *Final Permittee-Responsible Mitigation Plan for Onsite and Offsite Mitigation for Permitting Phase 1 of the Merced to Fresno Section of the California High-Speed Train Project* (Final PRMP; Authority and FRA 2013) is now available and provides a detailed definition of the Lazy K Mitigation Proposal.

With their approval of the MMRP and MMEP, the Authority and FRA committed to implementing mitigation for potential impacts that would occur with construction, operation, and maintenance of the Merced to Fresno Project Section. The Authority and FRA are seeking federal and state permits for impacts on aquatic and biological resources associated with the Project and are proposing to undertake mitigation at a specific site, the Lazy K Ranch (Ranch), which spans Merced and Madera Counties (Attachment 1). The Authority proposes to contract with Vollmar Natural Lands Consulting to secure the rights to the land and provide the services necessary to mitigate the potential loss of regulated aquatic resources and listed species' habitat as a result of the construction, operation, and maintenance of the initial permitting phase, referred to as Permitting Phase 1 (PP1).

Three distinct mitigation activities are proposed within separate areas of the Lazy K Mitigation Site (Attachment 2). To mitigate for PP1 impacts to species listed under the federal and state endangered species acts, 410.52 acres of existing vernal pools and annual grasslands will be preserved. To mitigate for impacts to jurisdictional waters, 16.76 acres of vernal pools will be created across a 115.18 acre area that had previously been leveled for agriculture. To mitigate for impacts to non-wetland riparian areas 3 acres adjacent to the Chowchilla River will be planted and enhanced adjacent to 1.09 acres of existing vegetation.

These areas, totaling approximately 530 acres, will be protected in perpetuity with the establishment of conservation easements over the property and the assurance that necessary and appropriate long-term management activities are conducted. Additional areas of the site will be used for staging and collection of vernal pool inoculum.

### *Management Objectives*

Execution of the Non-Competitively Bid (NCB) contract and implementation of the Lazy K Mitigation Proposal will satisfy commitments of the Merced to Fresno MMRP and MMEP and will also be a required condition of the following PP1 permits:

- Section 7 Biological Opinion, U.S. Fish and Wildlife Service
- Section 404 Individual Permit, U.S. Army Corps of Engineers
- Section 401 Water Quality Certification, State Water Resources Control Board
- Section 2081 Incidental Take Permit, California Fish and Wildlife Department
- Section 1602 Master Service Agreement, California Fish and Wildlife Department

The Authority has awarded a contract for Construction Package 1 (CP 1) of the Merced to Fresno Project Section. Prior to the award of the contract for the initial construction package, the Authority identified and evaluated four mitigation sites with potential to satisfy the Authority's needs for the first construction package (CP 1). This contractor was the only property owner with a readily available property that contained the listed species and highly valuable wetlands that could be preserved or restored to meet all of the Authority's mitigation needs in the most efficient manner. Owners of the other three parcels either have other plans for their properties, were not interested in selling the mitigation easements needed now, would require multiple separate parcels to meet all the requirements, or their properties' characteristics could not comply with the necessary environmental review to meet the Authority's schedule. In addition, this site would also result in unique connectivity to other nearby or adjacent federally designated recovery areas and critical habitat areas, which would provide additional habitat benefits. In addition, because of its size and location, this site may provide future mitigation opportunities for the Authority to consider.

Public Contract Code Section 10301 allows for the use of NCB contracts when the proposed acquisition of goods and services are the only goods and services that meet the State's needs. Due to the unique schedule and funding restrictions for CP-1 and the Lazy K's environmentally rich characteristics, use of an NCB contract meets the standard of the law. Only this Contractor's property and services will enable the Authority to procure the necessary permits in time for its initial construction plans.

### *Terms of Contract*

Based on an Authority prepared Scope of Work document (October 5, 2013) and Proposal response from Vollmar Natural Lands Consulting (October 9, 2013), the contract would require the following actions:

- Generation of information and reports that may be necessary to support the Authority's preparation of several resource agency required mitigation documents,

including a Final Permittee Responsible Mitigation Plan (FPRMP) and a Long-term Management Plan (LTMP);

- Securing a “Mitigation Use Rights Agreement” from the land-owners documenting permission to conduct the mitigation activities and record the necessary conservation easements;
- Conduct all work necessary to implement the vernal pool and riparian restoration activities as detailed by the FPRMP;
- Acquisition of local permits and documents (e.g., storm water pollution prevention plan) required for mitigation implementation;
- Conduct performance monitoring and reporting necessary to document successful completion of the restoration activities;
- Participation in the negotiation of a long-term management endowment account, the Property Record Analysis and terms of the conservation easement with the land trust selected to hold the conservation easement;
- Recordation of the Authority and resource agency-approved conservation easement(s) over the PP1 Mitigation Area as directed by the Authority;
- Establishing the long-term management endowment; and
- Implementation of a long-term monitoring and management of the turnkey mitigation until the responsibility is transferred to the conservation easement holder as outlined in the Authority and resource agency-approved conservation easements) and LTMP.

Given the long-term commitment required under the FPRMP and the LTMP, this contract agreement is to remain in effect until such time that: a) implementation of vernal pool restoration and riparian restoration performance standards are met; and, b) that the contractor’s long-term management and monitoring at the mitigation site is retained by the property owner or transferred to a third party conservation easement holder consistent with the provisions of the LTMP.

As documented in the NCB justification documents, the Authority has evaluated the estimated contract price provided by Vollmar Natural Lands Consulting and believes it is consistent with fair market value based on the price of available mitigation bank credits in the region and the costs of implementing similar mitigation proposals.

#### *Consistency with the Merced to Fresno Project*

Implementation of the Lazy K Mitigation Proposal is consistent with Bio-MM #58, adopted as part of the Merced to Fresno Project Section MMRP and MMEP, which requires the Authority to prepare and implement a Habitat Mitigation and Monitoring Plan. The plan requires, in part, the mitigation for temporary and permanent impacts on jurisdictional waters and state streambeds in accordance with agency approvals and permits needed for project construction and operation. The Authority is obligated to obtain these approvals and permits from the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the California State Water Resources Control Board, and the California Department of Fish and Wildlife.

#### *Compliance with California Environmental Quality Act*

Because the specific site(s) that would meet Authority and FRA offsite mitigation obligations were not yet identified at the time of the completion of the Final EIR/EIS the potential impacts of implementing offsite mitigation could not be analyzed at this site. In order to

document the potential effects of implementing the Lazy K Mitigation Proposal, the Authority has conducted an Environmental Re-examination and prepared an Addendum (Attachment 3) to the Merced to Fresno Final EIR/EIS. Consistent with Public Resources Code §21166 and the Guidelines for CEQA, this Re-examination and Addendum, together with the Merced to Fresno Final EIR/EIS document that implementation of the Lazy K Mitigation Proposal would not result in substantial changes to the Project because they do not involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects and therefore do not require the preparation of a subsequent or supplemental EIR/EIS.

#### *Funding Source and Consistency with Proposed Funding Source*

The recommendation to execute a contract for the Lazy K Mitigation Proposal is consistent with the expenditure provisions under The Budget Act of 2012 (Senate Bill 1029) which provides for the Authority to enter into contracts to implement mitigation activities for the purposes, in part, of implementing the high-speed rail project.

#### **Recommendation**

Staff recommends that the Board authorize the Authority's Chief Executive Officer, following successful negotiation of a final agreement, to enter into a Noncompetitive Bid (NCB) contract not to exceed \$10,000,000 to provide turnkey mitigation to comply with required environmental conservation and mitigation measures, conditions of approval, and permit conditions at the Lazy K Mitigation Site.

#### **Attachments**

- Regional Location Map
- Lazy K Mitigation Proposal Map
- CEQA Addendum
- Resolution #HSRA 13-31





# **Attachment 2** Proposed Uses for the Lazy K Mitigation Site

